IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

ORDER
IN
S.B. Civil Second Appeal No.45/1987

Chauth Mal S/o Shri Shankar Lal & Others
...defendant-appellants
Versus
Sohan Lal S/o Shri Suraj Mal (deceased) through
Legal Representatives Smt. Shanti Devi & Others
...plaintiff-respondents

Date of Order ::: 19.10.2006

Present
Hon'ble Mr. Justice Narendra Kumar Jain

Shri D.K. Dixit, Counsel for defendant-appellants
Shri Anil Mehta, with
Shri D.S. Poonia, Counsel for plaintiff-respondents
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By the Court:-

Heard learned counsel for the parties.

The plaintiff-respondents filed a suit for eviction, determination of rent as well as arrears of rent of the rented premises against the defendants in the lower court. The lower court determined the provisional rent on 6.2.1978 and it was directed that the defendants shall pay/deposit Rs.380/- for the period from 12.7.1976 to 11.2.1978 i.e. for 19 months at the rate of Rs.20/- per month. However, it was directed that the amount of Rs.240/-, already deposited by the defendants under Section 19-A of the Act, will be allowed to be withdrawn by the plaintiff.

The defendants did not deposit the remaining amount determined by the court vide order dated 6.2.1978 in accordance with the provisions of Sections 13 (3) and 13 (4) of the Rajasthan Premises (Control of Rent & Eviction) Act, 1950. However, the learned lower court partly decreed the suit in respect of recovery of arrears of rent at the rate of Rs.20/- per month from 11.7.1976 to 5.4.1978 and at the rate of Rs.35/- per month from 5.4.1978. The lower court did not pass a decree of eviction in respect of rented shop. Being aggrieved with the same, an appeal was preferred by the plaintiff.

The first appellate court considered the matter in detail and passed a speaking order. The first appellate court observed that the defendants did not deposit the full amount determined by the lower court vide order dated 6.2.1978 under Sections 13 (3) and 13 (4) of the Act, and he further committed a default by not depositing the amount for the period from 12.2.1978 to 11.8.1978 i.e. for six months, as the same was deposited subsequently on 15.12.1978. The first appellate court recorded a finding of fact that the defendant-appellant committed the second default and thus the plaintiff is entitled to have a decree of eviction in respect of rented shop against the defendant-appellants and consequently the first

appellate court passed a decree of eviction also, hence this appeal has been preferred by the defendant-appellants.

I have considered the submissions of learned counsel for both the parties in the light of findings of the first appellate court about second default committed by defendant-appellants and after considering their submissions I find that controversial issue involved in the present case relates to a question of fact and there is a finding of the first appellate court in this regard which cannot be interfered with by this court in second appeal under Section 100 of the C.P.C.

No substantial question of law is involved in this second appeal and the same is dismissed at admission stage with no order as to costs.

(Narendra Kumar Jain) J.

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